

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

DANTE ESPINOZA-HERNANDEZ,	)	
	)	
Petitioner,	)	
	)	
-vs-	)	Case No. CIV-16-436-F
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

**ORDER**

Petitioner, Dante Espinoza-Hernandez, a federal inmate proceeding *pro se*, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241, requesting “credit for the 8 months incarcerated in Victoria Cty., Texas, so that my out date reflect[s] such a credit.” Doc. no. 1 at 8.<sup>1</sup> This court referred the matter to United States Magistrate Judge Suzanne Mitchell for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B) and (C). Subsequently, on July 15, 2016, Magistrate Judge Mitchell issued a Report and Recommendation, recommending that petitioner’s action be dismissed without prejudice to refile for petitioner’s failure to exhaust administrative remedies.

Presently before the court is petitioner’s timely objection to the Report and Recommendation. Petitioner concedes that he has not exhausted his administrative remedies and requests leave to be able to “go through [the] steps and provide the appropriate proof.” Doc. no. 11 at 1. However, “judicial intervention is usually deferred *until* administrative remedies have been exhausted.” Williams v. O’Brien,


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<sup>1</sup> Citation to court documents is to the electronic case filing designation and pagination.

792 F.2d 986, 987 (10<sup>th</sup> Cir. 1986) (emphasis added). “A narrow exception to the exhaustion requirement applies if a petitioner can demonstrate that exhaustion is futile.” Garza v. Davis, 596 F.3d 1198, 1203 (10<sup>th</sup> Cir. 2010). Petitioner has not shown in his objection that attempting to exhaust his administrative remedies would be futile. Thus, the court concludes that petitioner must first exhaust his administrative remedies before seeking judicial relief. The court therefore accepts, adopts and affirms the recommended ruling of Magistrate Judge Mitchell.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Suzanne Mitchell on July 15, 2016 (doc. no. 10) is **ACCEPTED**, **ADOPTED** and **AFFIRMED**. The above-entitled action is **DISMISSED WITHOUT PREJUDICE** to refile for petitioner’s failure to exhaust administrative remedies.

DATED July 28, 2016.

  
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STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE